By the way, people with behavioral health problems are more often the victims of violence than they are the perpetrators of violence. So often this is part of what we ask police to respond to. We expect police to be psychiatrists and psychologists and first responders and experts at protecting others. Then, we can easily begin to want to question what equipment they used, what uniform they were told they needed to have on for the exercise that they were about to participate in, the public safety moment they were about to be part of.

These are hard jobs. They are difficult jobs that often come into the moment of difficulty in other people's lives—people who for whatever reason do something that they would normally not do, react in a way that they might normally not react or react out of incredible frustration because of the situation they found themselves in. But we expect the police to step forward and immediately be able to respond to that situation in a way that protects others. Does every police officer do the right thing every time? Probably not. Does almost every police officer do their very best to do the right thing ever time? Absolutely, they do. It is the exceptions that get attention, as they should. But for those of us who every day benefit and benefit in this building from the work they do—I remember on 9/11. One of my memories of 9/11 is that I am one of the last people to leave the Capitol Building and the police officer who is there telling me to get out as quickly as I could. As she says that to me, I realize, as I am leaving the door to try to get to a safer place, she—the police officer who says that I need to get out of here right now—is still standing at the place where she told me: You need to get out of here right now. Whoever else might have been left in the building, she was trying to be sure that they got out of the building, too.

That is what we expect the police to do. That is what their families know every day when they go to work, that they may be called on to do extraordinary things. For those who serve, we are grateful. This is an important week to be grateful to police officers whom we see and police who are helping us whom we do not see. So I am pleased to be here to thank them for their service.

TRADE

Mr. BLUNT. Mr. President, on another topic, I would just like to say that I hope we can move forward with the ability to have trade agreements. I was disappointed yesterday that we were not able to move forward and not vote on a trade agreement but to vote on the framework that at some point in the future would allow us to negotiate a trade agreement.

You cannot get the final negotiation on a trade agreement unless the people with whom you are negotiating know that the trade agreement is going to be voted on—yes or no—by the Congress. It cannot be an agreement that the Congress can go back and look at and say: Well, we do not really like that provision. We do not like this provision. Let's send it back, but let's not do what they said they were willing to do as part of this negotiation.

Trade is good for us. Trade is in almost all cases about tearing down barriers to our products, because we have very few barriers to those that we trade with. So trade is almost always an opportunity to sell more American products in other countries, particularly as it relates to the most likely first agreement we would get if we would get trade promotion authority. That agreement, the Trans-Pacific Partnership, will make a huge difference in the way that part of the world develops, if they develop based on a trade relationship where the rule of law matters, a trade relationship where everyone is treated in a way where you are looking for a way to come back and have more ability to work together in the future, where you are working on trade relationships where not every ounce of profit has to be made on any one deal, because you are always thinking about what happens next.

We have great opportunities there and they do too. That part of the world will be dramatically different 10 years from now and even more different 20 years from now, if our system becomes a system that becomes the basis for how they move into their economic future and create economic opportunity for them and for us—as opposed to the other alternatives, which are much more colonial in nature, much more cynical in nature, much more likely to be one big trading partner, and there is one little trading partner in every deal.

That is not the way this works. That is not the way it should work, but we can't get to that final opportunity for American workers unless we have an agreement where we understand what happens to that agreement once it has been negotiated.

The best thing, the best offer does not come until the people on the other side of the negotiating table know they are doing this under trade promotion authority, an authority that every President since Franklin Roosevelt has had, and every President since Franklin Roosevelt asked for, until this President, who didn't ask for it until his second term and then clearly didn't do anything to push for it until after the congressional elections last year.

But this is a 6-year ability to create more opportunities for American workers and jobs that provide good take-home pay for American workers. I hope the unfortunate decision not to move forward and get this done is a decision the Senate quickly has a chance to rethink, revote on, and move forward.

With that, I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER (Mr. FLAKE). Morning business is closed.

ENSURING TAX EXEMPT ORGANIZATIONS THE RIGHT TO APPEAL ACT—MOTION TO PROCEED

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of the motion to proceed to H.R. 1314, which the clerk will report.

The senior assistant legislative clerk read as follows:

Motion to proceed to Calendar No. 58, H.R. 1314, a bill to amend the Internal Revenue Code of 1986 to provide for a right to an administrative appeal relating to adverse determinations of tax-exempt status of certain organizations.

The PRESIDING OFFICER. The Senator from Arkansas.

OUR COUNTRY'S WORD ON THE INTERNATIONAL STAGE

Mr. COTTON. Mr. President, it has been nearly 2 years since the Syrian tyrant Bashar al-Assad attacked his own people with sarin gas, crossing President Obama's so-called red line. At the time, President Obama grudgingly called for airstrikes against Assad but hesitated at the moment of decision. When Secretary of State Kerry opened the door to a negotiated solution, Vladimir Putin barged in, allowing Assad the pretext of turning over his chemical weapons to avoid U.S. airstrikes. The amen chorus proclaimed a strategic master stroke.

But it wasn't so. Street-smart observers were onto Assad's game. He only needed to keep a tiny fraction of his chemical stockpile to retain his military utility. Syria thus could open most—but not all—of its facilities at no cost to the regime.

In fact, because most of Syria's chemical agents were old, potentially unreliable yet still dangerous, the regime actually benefitted by getting the West to pay for the removal of the old stockpiles.

And where are we now? Exactly where a few of my colleagues and I warned we would be. News reports just this week indicate that the Organisation for the Prohibition of Chemical Weapons has discovered new evidence of sarin gas and VX nerve agent—9 months after the organization declared Syria had disposed of all of its chemical weapons. In the meantime, Assad has simply shifted to chlorine gas for chemical attacks against his own people, which is also prohibited by the Chemical Weapons Convention, even though Syria signed that convention as part of President Obama's deal in 2013.

I am appalled by these reports that the Syrian regime has obtained stocks of chemical weapons, but I cannot say I am surprised. Anyone with eyes to see knew the message President Obama had sent. When he flinched in 2013 in the face of Assad's brazen and brutal

use of sarin gas on civilians, it only emboldened Assad to continue testing U.S. resolve.

Of course, the fallout goes far beyond Syria. The failure to enforce the U.S. red line against the use of chemical weapons in Syria has severely damaged U.S. credibility around the world. I hear this message from leaders of countries not just in the region but across the globe. The message sounds most loudly with Iran, where the Ayatollahs continue their headlong pursuit of nuclear weapons capabilities with impunity. Regrettably, then, we are reaping the bitter fruits of President Obama's weakness in 2013.

There are two simple lessons we must draw from this sad sequence of events. First, our country's word on the international stage must be good and it must be credible. When a President draws a red line and fails to back it up, it only emboldens our enemies and makes America appear as the weak horse. Remember, Osama bin Laden famously said that when given the choice between a weak horse and a strong horse, people will, by nature, root for the strong horse. Under Barack Obama, America increasingly looks like the weak horse.

Second, we cannot trust tyrannical regimes to abide by agreements unless we force them to do so. This means that any agreement with Iran about its nuclear weapons program must contain the most stringent conditions, impose the most intrusive verification procedures, and ultimately prevent Iran from obtaining a nuclear weapons capability.

The framework agreement President Obama has reached with Iran meets none of those standards. Moreover, the administration's concealment of Syria's cheating surely foreshadows how it will look the other way when Iran cheats on any final deal.

Assad's cheating on his chemical weapons agreement today is devastating for the people of Syria, but Iran's cheating on a nuclear agreement in the future could be catastrophic for the United States and the world at large.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

Mr. CORNYN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

PATRIOT ACT

Mr. CORNYN. Mr. President, in February, the Director of the National Counterterrorism Center estimated that nearly 20,000 foreign fighters had joined ISIS or other related groups in Syria. Among those, some 3,000 were from Western countries. In other words, many of them either had American passports or those that are part of the visa waiver program and could travel, really, without anything other than that passport in the country. Over 150 were from the United States.

Just last week, in describing the widespread nature of this growing threat, FBI Director James Comey said that the FBI is working on hundreds of investigations in the United States, hundreds of investigations. In fact, according to Comey, all 56 of the FBI's field divisions now have open inquiries regarding suspected cases of homegrown terrorism—again, not people coming from Syria or Afghanistan or someplace in the Middle East, these are often Americans who have become radicalized due to the use of social media or the Internet—much as 5 years ago we saw at Fort Hood, TX, a major in the U.S. Army, Nidal Hasan, who had been radicalized by a cleric, Anwar al-Awlaki.

Major Hasan actually pulled out his weapon and killed 13 people, 12 uniformed military, 1 civilian, and shot roughly 30 more in a terrible terrorist attack at Fort Hood, TX.

So today we are not just worried about a major attack on a significant cultural or economic hub, we also have to worry about ISIS-inspired terrorists all around the country, even as we witnessed in my home State of Texas just on May 3.

When you begin to look at the story—that I will ask to be made part of the RECORD—written by the New York Times on May 11, 2015, it explains how this new threat of homegrown terrorism is inspired. I will quote a few pieces of it:

> Hours before he drove into a Texas parking lot last week and opened fire with an assault rifle outside a Prophet Muhammad cartoon contest, Elton Simpson, 30, logged onto Twitter.
>
> ''Follow @__AbuHu55ain,'' Mr. Simpson posted, promoting a Twitter account believed to belong to Junaid Hussain, a young computer expert from Birmingham, England, who moved to Syria two years ago to join the Islamic State and has become one of the extremist group's celebrity hackers.

Well, there is a question—as the article goes on to say—whether or not Mr. Simpson and his colleague, who came, I believe, from Phoenix, AZ, and went on to Garland, TX, to carry out this attack—whether they were actually recruited ahead of time by ISIL or whether ISIL just claimed credit after the fact. But the article goes on to say:

> It was the first time that the terror group had tried to claim credit for an operation carried out in its name on American soil. . . . Yet Mr. Simpson appears to have been part of a network of Islamic State adherents in several countries, including the group's hub in Syria, who have encouraged attacks and highlighted the Texas event as a worthy target.

Mr. President, I ask unanimous consent to have printed in the RECORD, following my remarks, this New York Times article from May 11, 2015, and a Wall Street Journal article from May 12, 2015, by Michael B. Mukasey.

So what FBI Director Comey has expressed concern about recently is apparently very real. It is as real as the daily newspaper recounting the attack on May 3 in Garland, TX, of all places.

Terrorists are sending a clear signal to those in the United States and other Western countries: If you can't fight us abroad, we are going to bring the fight to you in your own country.

This heightened threat environment has led Pentagon officials to raise the security level at U.S. military bases. The last time the threat level was raised to this level was the 10th anniversary of the September 11 attacks.

I still remember when the former admiral, Bobby Inman, who served for a long time in the Navy and then also in the intelligence community, was asked about 9/11. He said: It wasn't so much a failure of intelligence, as it was a failure of imagination.

Nobody imagined that terrorists would hijack a plane and fly it into one of our Nation's highest skyscrapers, thus, in the process, killing approximately 3,000 people.

So we need to remember not to have a failure of imagination when it comes to the tactics used by terrorists and those who inspire them abroad. Remarks like those from Director Comey and the Director of our National Counterterrorism Center are certainly troubling ones for us to hear, and it counsels caution.

While the United States has been mostly successful in thwarting attacks on our homeland since 9/11, the threats are still very real. In fact, the terrorist threat has evolved and become more complex in recent years.

In Texas, we rightly recognize that the role of government should be constrained to focus on core functions. At the Federal level, of course, this means things such as passing a budget. But surely it also means protecting our country and its security and the security of the American people.

That brings me to some business that we are going to have to conduct here in the Congress sometime within the next couple of weeks before certain provisions of the U.S. PATRIOT Act expire on June 1. I believe that if we allow these provisions to expire, our homeland security will be at a much greater risk. So I think we need to talk a little bit about it and explain not only the threat but what our intelligence community and our national security officials are doing, working with Congress and the administration, to make sure Americans are safe, and the PATRIOT Act is part of it.

I recognize there are many who perhaps haven't read the PATRIOT Act or whose memories have perhaps dimmed since those terrible events on 9/11 and who think we don't need the PATRIOT Act. But I would argue that the PATRIOT Act serves as a tool for intelligence and law enforcement officials to protect our Nation from those who are seeking to harm us. Three of those useful tools will expire at the end of the month, including section 215, which allows the National Security Agency to access certain types of data, including phone records.

There has been a lot of misunderstanding and, frankly, some of it downright deceptive, about what this does, when, in fact, section 215 is a business records collection provision that happens to be applied to collecting phone records but not the content of phone records. This is one of the misleading statements made by some folks who think we ought to let this provision expire.

Right now, under current law, which is set to expire June 1, our intelligence community can get basically three types of information about a phone record: the calling and receiving number, the time of the call, and the duration. That is it—no content, no names or addresses. You can't even get cell tower identification that would tell one where the call is coming from.

Much has been said about this program, and, as I said, much of it misleading or downright false, but I want to focus now on the oversight that is built into this program because I think Americans understand we need to take steps in a dangerous world to keep the American people safe, but they also value their privacy, and justly so. We all do. So it is important to remind the American people and our colleagues as we take up this important provision of law about what we have already built into the law to protect the privacy of American citizens who are not engaged in any communication with foreign terrorists or being inspired by foreign terrorists to commit acts of terrorism here in the homeland.

Let me talk about the barriers we have created in the law for an NSA—National Security Agency—analyst to overcome before seeing any real information from this data. First, for the NSA to have access to phone records at all—at all—a special court must approve an order requiring telephone companies to provide those call records to the Agency. That order has been in place since roughly 2006, where the Foreign Intelligence Surveillance Court, the specialized court created by Congress for this purpose, has issued an order requiring the telephone companies to turn over these call records—again, no content, no name and address, but merely the sending number, the receiving number, and the duration. That is the core information which is required.

It is important to point out that these records include only the most basic limited information. They do not include the information I suggested earlier—the content, names and addresses, and the like.

So the National Security Agency is not, as some have assumed wrongly, able to retrieve old phone conversations. They do not collect that sort of information, nor are they able to simply listen in on any American's phone conversations under this authority. That would be a violation of the protections Congress has put in place under the provisions of the PATRIOT Act.

Before an analyst at the NSA can even search for or query the database, they must go through even more controls, and these are important. To be granted the ability to search the database, the analyst must demonstrate to the FISA Court—the Foreign Intelligence Surveillance Court created by Congress for this purpose—that there is a reasonable, articulable suspicion that the phone number is associated with terrorism.

This is similar—not the same but similar—in many respects to the protections offered in a criminal case under the Fourth Amendment to the Constitution where law enforcement agencies would have to come in and establish probable cause that a crime has been committed before a search would be allowed. But since this is an investigation into foreign-induced terrorist activity, the standard Congress set was a reasonable, articulable suspicion that the phone number is associated with terrorism. If the court determines that standard has been met, they can grant access to the conversation but not under any other circumstance.

If the NSA believes the phone number belongs to someone who intends to attack our country, the Agency must go back to court another time to be granted other abilities to surveil that individual.

In addition to these checks and balances between the National Security Agency and the courts, all three branches of government have oversight over this program. And strong oversight of the intelligence community is absolutely essential to safeguarding our freedoms and our liberty.

Because parts of this program are by and large classified, you are not going to hear public debates about it. Indeed, that puts defenders of the program at some disadvantage to those who attack it—sometimes in a misleading or deceptive sort of way—because it is very difficult to counter that with factual information when they are talking about a classified program, or parts of which are classified. It is important that our enemies don't know exactly what we are doing because then they can wire around it.

We live, of course, in a world with many threats, as I said, many of them in our backyard. Many of them can be thwarted with good intelligence and law enforcement. And I make that distinction on purpose—intelligence and law enforcement. Law enforcement—as we learned with 9/11, we can't just treat terrorism as a criminal act. It is a criminal act, but if we are going to stop it, we need access to good intelligence to thwart it before that act actually occurs. It is not enough to say to the American people: Well, we will deploy all of the tools available to law enforcement to prosecute the person who murders innocent people. We need to keep the commitment to protect them from that innocent slaughter in the first place, and the only way we do that is by using legitimate tools of intelligence, such as this program I am discussing.

Earlier this year, for example, the United States frustrated a potential attack by a man from Ohio. He was an ISIS sympathizer and had plans to bomb the building we are standing in today, the U.S. Capitol. That potential attack was thwarted by the use of good intelligence under the limitations and strictures and procedures I described a moment ago. Over the past 2 years, the FBI has told us they have stopped 50 American citizens from traveling overseas and joining the Islamic State and then coming back. So clearly the intelligence community has a vital role to play in safeguarding the American people in our homeland.

Some in the intelligence community have said the bulk data collection I have described here briefly has led to a safer United States, and it is because of programs such as these that we are much better off than we were pre-9/11. That is very important because the last thing I would think we would want to do here in Congress is to return us to a pre-9/11 mentality when it comes to the threat of terrorism both abroad and here at home and to make it harder for our national security personnel to protect the American people.

I believe the portion of the PATRIOT Act in question provides our intelligence community with the tools they need in order to effectively protect all Americans.

I have been briefed on this program. We just had a briefing yesterday by the Office of the Director of National Intelligence, by the FBI Director, by DOJ personnel, and by the leader of the National Security Agency. It was held downstairs in a secure facility because, as I said, much of it was classified. Much of it we can't talk about without alerting our adversaries to ways to circumvent it. But all responsible Members of Congress have taken advantage of the opportunity to learn about how this program works as part of our oversight responsibilities.

I remain convinced that this program, like many others, has helped to keep us safe while using appropriate checks and balances to ensure that our liberties remain intact. And Congress, by maintaining strong oversight of these and other government programs, can have a win-win situation that both protects American lives and protects American liberties.

Mr. President, I want to draw my colleagues' attention to an opinion piece that appeared today in the Wall Street Journal that was written by Michael B. Mukasey, who, of course, was a former U.S. district judge and more recently Attorney General of the United States from 2007 to 2009. General Mukasey writes in this article about the Second Circuit opinion that has prompted so much recent discussion about section 215 of the PATRIOT Act and the bulk metadata collection process I described a moment ago. I think he makes some very important points.

First of all, he makes the important point that it is a good thing Congress has created a special Foreign Intelligence Surveillance Court because the Second Circuit Court of Appeals, no matter how good they are as judges, simply doesn't have the experience to deal with parsing the law on intelligence matters and things such as this 215 provision I talked about a moment ago.

He makes the important point that intelligence by its nature is forward-looking and our criminal justice system, which is what most courts have experience with, is backward-looking—in other words, something bad has already happened and the police and investigators and prosecutors are trying to bring somebody to justice for committing a criminal act. But our intelligence community is supposed to look forward and to help prevent those terrible accidents or incidents from occurring in the first place.

The second point General Mukasey makes in this article is that the Second Circuit panel of judges assumes that many Members of Congress are simply unaware of the provisions of the PATRIOT Act I mentioned earlier—section 215, this metadata collection—which is a terrible and glaring mistake on the part of the Second Circuit panel.

As I pointed out yesterday, just as we have done many times previously, Members of the Senate and the Congress generally have regular or at least periodic briefings on these intelligence programs as part of our oversight responsibilities. For the Second Circuit panel to suggest that Congress didn't know what it was talking about when it authorized these programs and when it wrote this provision of the law is simply erroneous.

The third point General Mukasey makes is that the judges didn't even stop the program in the first place. So it makes one really wonder why they handed down their opinion about 3 weeks before the expiration of this provision, when Congress is going to have to take up this matter anyway, unless they wanted to have some impact on our deliberations here.

What Attorney General Mukasey suggested, I think, is good advice. There needs to be an appeal to the Second Circuit Court en banc and then to the U.S. Supreme Court to get a final word. We don't need to settle on what he calls a ''Rube Goldberg'' procedure that would have data stored and searched by the telephone companies, he says, whose computers can be penetrated and whose employees have neither the security clearance nor the training of the NSA staff.

Mr. President, I commend this article to my colleagues.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, May 11, 2015]

CLUES ON TWITTER SHOW TIES BETWEEN TEXAS GUNMAN AND ISIS NETWORK

(By Rukmini Callimachi)

Hours before he drove into a Texas parking lot last week and opened fire with an assault rifle outside a Prophet Muhammad cartoon contest, Elton Simpson, 30, logged onto Twitter.

''Follow @__AbuHu55ain,'' Mr. Simpson posted, promoting a Twitter account believed to belong to Junaid Hussain, a young computer expert from Birmingham, England, who moved to Syria two years ago to join the Islamic State and has become one of the extremist group's celebrity hackers.

This seemingly routine shout-out is an intriguing clue to the question of whether the gunmen, Mr. Simpson and Nadir Soofi, 34, both of Phoenix, were acting in concert with the Islamic State, also known as ISIS or ISIL, in carrying out an attack outside a community center in Garland, Tex. The Islamic State said two days later that the two men, who were killed by officers after opening fire, were ''soldiers of the Caliphate.'' It was the first time that the terror group had tried to claim credit for an operation carried out in its name on American soil.

As the gunmen were driving toward the Curtis Culwell Center, Mr. Hussain logged onto Twitter himself from half a world away, firing off a series of posts in the hour before the attack began at 7 p.m. on May 3. One message posted to his account about 5:45 p.m. seemed to predict imminent violence: ''The knives have been sharpened, soon we will come to your streets with death and slaughter!''

After the attack, Mr. Hussain was in the first wave of people who praised the gunmen, before his account was suspended.

Law enforcement officials have not presented any conclusive evidence that the Islamic State planned or directed the attack. Yet Mr. Simpson appears to have been part of a network of Islamic State adherents in several countries, including the group's hub in Syria, who have encouraged attacks and highlighted the Texas event as a worthy target.

Counterterrorism officials say the case shows how the Islamic State and its supporters use social media to cheerlead for attacks without engaging in the secret training, plotting and control that has long characterized Al Qaeda. But a close look at Mr. Simpson's Twitter connections shows that he had developed a notable online relationship with some of the Islamic State's best-known promoters on the Internet, and that they actively encouraged such acts of terror.

Speaking of the Texas case last week, James B. Comey, the director of the Federal Bureau of Investigation, said the distinction between an attack ''inspired'' by a foreign terrorist group and one ''directed'' by the group ''is breaking down.''

''It's not a useful framework,'' he added.

Mr. Simpson was radicalized years before the Islamic State announced in 2014 that it was creating a caliphate, a unified land for Muslims, and drew global attention for territorial gains and brutal violence. He was investigated by the F.B.I. starting in 2006 and was sentenced to probation in 2011 for lying to investigators. But like many young Muslims drawn by the sensational image of the Islamic State, he enthusiastically joined its virtual community of supporters.

An analysis of Mr. Simpson's Twitter account by the SITE Intelligence Group, which tracks extremist statements, found that Mr. Simpson followed more than 400 other accounts, including ''hardcore I.S. fighters from around the world.'' They included an alleged British fighter for the Islamic State, known as Abu Abdullah Britani, who according to SITE is believed to be Abu Rahin Aziz, a radical British national who skipped bail to join the terror group. They also included an alleged American fighter called Abu Khalid Al-Amriki and numerous female Islamic State jihadists.

Many of Mr. Simpson's posts announced the new Twitter handles of Islamic State members whose accounts the social media company had suspended, messages commonly called ''shout-outs.''

''He was taking part in shout-outs of ISIS accounts that were previously suspended, and this shows a pretty deep involvement in the network online,'' says J. M. Berger, a senior fellow at the Brookings Institution and co-author of a book about the Islamic State. ''He was wired into a legitimate foreign fighters network.''

Starting last fall, the Islamic State has repeatedly called for attacks in the West by supporters with no direct connection to its core leadership, and there have been at least six attacks in Europe, Canada and Australia by gunmen who appeared to have been inspired by the group. Each attacker left an online trail similar to that of Mr. Simpson, though not all were in contact with Islamic State operatives in Syria.

A review of Mr. Simpson's Twitter account shows that he interacted not just with sympathizers of the Islamic State, but also with fighters believed to be in Syria and Africa. Some of these fighters later posted on Twitter details of Mr. Simpson's biography not yet in the public sphere, suggesting that he had shared details about his life with them.

''The thing that clearly stands out if you peruse the Texas shooter's timeline is his third to last tweet,'' the one promoting Mr. Hussain, said Daveed Gartenstein-Ross, a senior fellow who researches extremism at the Foundation for the Defense of Democracies and who shared a PDF of Mr. Simpson's Twitter history.

Veryan Khan, who helps run the Terrorism Research and Analysis Consortium, said that Mr. Simpson probably urged others to follow Mr. Hussain in order to draw broader attention to his forthcoming attack. ''He wanted to make sure everyone in those circles knew what he'd done,'' she said. ''It was attention-seeking—that's what it looks like,'' added Ms. Khan, whose organization tracks some 5,000 Islamic State figures and supporters.

While still living in Birmingham, Mr. Hussain rose to notoriety as a hacker working under the screen name Tr1Ck, and he was believed to be a core member of what was called TeaM p0isoN. The team claimed a string of high profile cyberattacks, hacking into a Scotland Yard conference call on combating hackers and posting Facebook updates to the pages of its chief executive, Mark Zuckerberg, and former President Nicolas Sarkozy of France.

Mr. Hussain was eventually arrested, and he served a six-month prison sentence before traveling to Syria. He has since been linked to a number of Islamic State hacking attacks overseas, though some security officials have doubts about his role.

Another well-known promoter of the Islamic State who engaged with Mr. Simpson was a jihadist known on Twitter as Mujahid Miski, believed to be Mohamed Abdullahi Hassan, a Somali-American from Minnesota. Though Mr. Hassan lives in Somalia, he has emerged as an influential recruiter for the group.

On April 23, the account Mujahid Miski shared a link on Twitter to a listing for the Muhammad cartoon contest and goaded his followers to attack it. ''The brothers from the Charlie Hebdo attack did their part. It's time for brothers in the #US to do their part,'' he wrote. Among the nine people who

retweeted his call to violence, according to SITE, was Mr. Simpson.

Three days later, Mr. Simpson reached out to Mujahid Miski on Twitter, asking him to message him privately. Whether they actually communicated, or what they may have said, is not publicly known. Minutes before Mr. Simpson arrived at the cartoon event in Garland and began shooting, he went on Twitter one last time to link the attack to the Islamic State. ''The bro with me and myself have given bay'ah to Amirul Mu'mineem,'' he wrote, using the vocabulary of the Islamic State to say that they had given an oath of allegiance to the Emir of the Believers—the leader of the Islamic State, Abu Bakr al-Baghdadi.

''May Allah accept us as mujahedeen,'' he wrote, adding the hashtag ''#TexasAttack.''

Among those who retweeted this last post was Mr. Hussain, the Islamic State hacker in Syria. ''Allahu Akbar!!!!'' he wrote. ''2 of our brothers just opened fire at the Prophet Muhammad (s.a.w) art exhibition in Texas!'' he added, using the Arabic abbreviation for ''peace be upon him.''

After Mr. Simpson's death, Mujahid Miski tweeted a series of posts, calling Mr. Simpson ''Mutawakil,'' ''One who has faith,'' a variation on Mr. Simpson's Twitter handle, ''Atawaakul,'' meaning ''To have faith.''

''I'm gonna miss Mutawakil,'' Mujahid Miski wrote. ''He was truly a man of wisdom. I'm gonna miss his greeting every morning on twitter.''

[From the Wall Street Journal, May 12, 2015]

IMPEDING THE FIGHT AGAINST TERROR

THE APPEALS-COURT RULING ON SURVEILLANCE WILL HAVE DAMAGING CONSEQUENCES IF OBAMA DOESN'T APPEAL

(By Michael B. Mukasey)

Usually, the only relevant objections to a judicial opinion concern errors of law and fact. Not so with a federal appeals court ruling on May 7 invalidating the National Security Agency's bulk collection of telephone metadata under the USA Patriot Act.

Not that the ruling by the three-judge panel of the Second Circuit in New York lacks for errors of law and fact. The panel found that when the Patriot Act, passed in the aftermath of 9/11, permitted the government to subpoena business records ''relevant'' to an authorized investigation, the statute couldn't have meant bulk telephone metadata—consisting of every calling number, called number, and the date and length of every call.

That ends up subpoenaing everything, the panel reasoned, and what is ''relevant'' is necessarily a subset of everything. In aid of this argument the panel summons not only the dictionary definition of an investigation, but also the law that relates to a grand-jury subpoena in a criminal case, which limits the government to ''relevant'' information.

Yet the judicial panel failed to consider the purpose of the statute it was analyzing. The Patriot Act concerns intelligence gathering, which is forward-looking and necessarily requires a body of data from which potentially useful information about events in the planning stage may be gathered. A grand jury investigation, by contrast, is backward-looking, and requires only limited data relating to past events. A base of data from which to gather intelligence is at least arguably ''relevant'' to an authorized intelligence investigation.

Equally serious an error is the panel's suggestion that many, perhaps most, members of Congress were unaware of the NSA's bulk metadata collection when they repeatedly reauthorized the statute, most recently in 2011. The judges suggest that an explanation of the program was available only in ''secure locations, for a limited time period and under a number of restrictions.'' In addition to being given briefing papers, lawmakers had available live briefings, including from the directors of the FBI and the National Intelligence office.

In any event, no case until the judicial panel's ruling last week has ever held that a federal tribunal may engage in telepathic hallucination to figure out whether a statute has the force of law.

The panel adds that because the program was highly classified, Congress didn't have the benefit of public debate. Which is to say, no truly authorized secret intelligence-gathering effort can exist unless we let in on the secret those from and about whom the intelligence is to be gathered. Overlooked in this exertion is the Founders' foresight about the need for secrecy—expressed in the body of the Constitution in the requirement that each legislative house publish a journal of its proceedings ''excepting such Parts as may in their Judgment require Secrecy.''

But isn't the misbegotten ruling by this trio of federal judges correctable on appeal? Or won't it be made moot because the Patriot Act must be reauthorized by June 1 and Congress will either enact substitute legislation, or let the statute lapse, or simply reauthorize it with full knowledge of how the program works? Here the Second Circuit's opinion is problematic in ways not immediately apparent.

The judges didn't reverse the lower-court opinion upholding the NSA data-collection program and order the program stopped. Rather, the panel simply vacated that opinion and sent the case back to the lower court to decide whether it is necessary to stop the program now. By rendering its order in a non-final form, the panel made it less likely that the Supreme Court would hear the case even if asked, because the justices generally won't take up issues that arise from non-final orders.

Moreover, the opinion tries to head off the argument that if Congress reauthorizes the Patriot Act in its current form, lawmakers will have endorsed the metadata program. The panel writes: ''If Congress fails to reauthorize Section 215 itself, or re-enacts Section 215 without expanding it to authorize the telephone metadata program, there will be no need for prospective relief, since the program will end.'' That is, unless Congress adopts the panel's view of what Congress has done, rather than its own view of what it has done, the program must end.

Then there is the opinion's timing. The case was argued eight months ago. This opinion, or one like it, easily could have been published in time for orderly review by the Supreme Court so the justices could weigh matters arguably critical to the nation's security. Or the panel could have followed the example of the D.C. Circuit and the Ninth Circuit—which have had cases involving the NSA's surveillance program pending for months—and refrained from issuing an opinion that could have no effect other than to insert the views of judges into the deliberations of the political branches.

What to do? An administration firmly committed to preserving all surveillance tools in a world that now includes al Qaeda, Islamic State and many other terror groups, would seek a quick a review by the Supreme Court. But President Obama has already stated his willingness to end bulk collection of metadata by the government. Instead, he wants to rely on a Rube Goldberg procedure that would have the data stored and searched by the telephone companies (whose computers can be penetrated and whose employees have neither the security clearance nor the training of NSA staff).

The government, under Mr. Obama's plan, would be obliged to scurry to court for permission to examine the data, and then to each telephone company in turn, with no requirement that the companies retain data and thus no guarantee that it would even be there. These constitute burdens on national security with no meaningful privacy protection.

The president's plan would make protecting national security more difficult. We would all have been better off if the Second Circuit panel had avoided needless complication and instead emulated the judicial modesty of their Ninth Circuit and D.C. Circuit colleagues.

Mr. CORNYN. I yield the floor to the majority leader.

The PRESIDING OFFICER. The majority leader.

UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. MCCONNELL. Mr. President, I ask unanimous consent that at 1 p.m. today, the Senate proceed to executive session to consider Executive Calendar No. 80, the nomination of Sally Yates to be Deputy Attorney General; that there be 1 hour for debate, equally divided in the usual form; that upon the use or yielding back of time, the Senate proceed to vote without intervening action or debate on the nomination; that following disposition of the nomination, the motion to reconsider be considered made and laid upon the table; that no further motion be in order to the nomination; that any statements related to the nomination be printed in the RECORD; that the President be immediately notified of the Senate's action, and the Senate then resume legislative session and the motion to proceed to H.R. 1314.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Rhode Island.

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent to speak for up to 15 minutes as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

CLIMATE CHANGE

Mr. WHITEHOUSE. Mr. President, I am here today for the 99th time to remind us that we are sleepwalking our way to a climate catastrophe, and that it is time to wake up.

NOAA, the National Oceanic and Atmospheric Administration of the United States, recently announced an ominous milestone. This March, for the first time in human history, the monthly average of CO_2 in our atmosphere exceeded 400 parts per million. This chart shows the global concentration of carbon dioxide over the last few years as measured by NOAA. The level varies with the seasons. The Earth sort of inhales and exhales carbon dioxide as the seasons pass. But overall, we can see the steady prominent upward march of CO_2 levels, rising right here to above 400 parts per million for the month of March 2015.

Scientists at NOAA's Mauna Loa Observatory in Hawaii first measured an atmospheric concentration of CO_2 above 400 parts per million in 2013—for the very first time. It reached up and it

touched 400 parts per million for the first time and then receded again. Now, 2 years later, as we continue dumping carbon pollution into the atmosphere, the average weekly air sample from NOAA's entire global network of sampling stations measured an average—a month-long average—of 400 parts per million for the entire month of March. That is a daunting marker.

Global carbon concentrations haven't been this high for at least 800,000 years, much longer—much longer—than humankind has walked the Earth. Every year, that concentration increases.

The fact that increasing levels of carbon in the atmosphere warm the planet has been established science for 150 years. Science on this was being published in scientific journals when Abraham Lincoln in his top hat was walking around Washington. We have pumped more and more carbon pollution into the atmosphere, and we have measured corresponding changes in global temperatures.

Now, there is some mischief afoot, people who cherry-pick the data to create false impressions—to create false doubt. Well, the honest thing to do is to look at all of the data. When we look at all of the data, we see long-term warming. We see warming so obvious that scientists call the evidence unequivocal—unequivocal. That is about as strong a science word as we can have.

Evidence of the changing climate, the consequences of unchecked carbon pollution, abounds: more extreme weather, rising sea levels, and warming and acidifying oceans—all as predicted. These changes are already starting to hurt people, through more severe heat waves, parched fields, flooded towns and homes, altered ecosystems, and threatened fisheries. We have certainly seen the fisheries change at home in my State of Rhode Island. We are already starting to pay the price of our continued and reckless burning of fossil fuels.

Dr. James Butler, the Director of NOAA's Global Monitoring Division, says:

> Elimination of about 80 percent of fossil fuel emissions would essentially stop the rise in carbon dioxide in the atmosphere, but concentrations of carbon dioxide would not start decreasing until even further reductions are made.

We need to cut our use of fossil fuels, we need to cut energy waste, and we need to generate more of our energy from clean and renewable sources. We need to do it, and we can do it. We have the technologies and the policies available right now. We can choose to level the playing field for clean energy, to make polluters pay for the climate costs of their pollution, and to move forward to a low-carbon economy—the one with the green jobs, with the American innovation, with the safer climate. But we are not going to get there with business as usual.

That brings me to the fast-track trade bill, which, I am glad to say, failed its procedural vote in the Senate this week—a bill that would make it easier for the administration to commit the United States to new sweeping trade agreements.

The first agreement waiting to get through is the Trans-Pacific Partnership—some call it the TPP—which is being sold as ''a trade deal for the 21st century.'' But when it comes to climate change, the fast-track bill and the Pacific trade bill aren't 21st century solutions. They are business as usual.

Past trade deals have not been kind to workers in Rhode Island. I have been to Rhode Island factories and seen the holes in the floor where machinery had been unbolted and shipped to other countries for foreign workers to perform the same job for the same customers on the same machines. That is what we saw from trade bills. The trade advocates always say it is going to be wonderful, but then what do we see? Jobs offshored again and a huge trade deficit.

Past U.S. trade deals have required participating countries to join some multilateral environmental agreements, including agreements to protect endangered species, whales, and tuna; to help keep the oceans free of pollution; and to protect the ozone layer by reducing the use of HFCs and other ozone-depleting gases. But I haven't seen much enforcement, and everywhere we look things are getting worse. I am not impressed.

When it comes to climate change, the fast-track bill is silent. There is no mention of, let alone protection for, commitments the United States and other countries might make to cut carbon pollution.

The United Nations Framework Convention on Climate Change is the main international agreement for dealing with climate change. The Senate ratified this treaty in 1992, and since then, under various administrations, the United States has taken a leading role under the framework to reach global accord and, particularly, to work to reach a global accord in Paris later this winter. The Paris accord is perhaps our last best hope to put the world on a path that avoids severe climate disruption, even climate catastrophe.

That fast-track bill and the Pacific trade bill ought to enable and support our trade partners to live up to their climate agreement. Those bills ought to protect countries that act to address climate change. In particular, they ought to protect them from the threat of trade sanctions or from corporate challenges seeking to undermine sovereign countries' climate laws.

These 21st century agreements on trade ought to match our 21st century commitments on climate, but they don't. Fast-track is silent on the United Nations Framework Convention on Climate Change and on climate change more broadly. Fast-track provides no protection for our own or any other country's climate commitments. And we have heard nothing to suggest the Pacific trade bill will be any better.

What we do know about the Pacific trade bill is not encouraging. The Pacific trade bill, in its agreement under negotiation as we see it now, includes the horrible investor-state dispute settlement mechanism, called ISDS, a mechanism that allows big multinational corporations and their investors to challenge a country's domestic rules and regulations—outside of that country's judicial process, outside of any traditional judicial process, outside of appeal, outside of traditional judicial baseline principles such as precedent.

Increasingly, these ISDS challenges are being turned against countries' environmental and public health standards. Fossil fuel companies such as Chevron and ExxonMobil have brought hundreds of disputes against almost 100 governments when those governments' policies threaten corporate profits. In fact, more than 85 percent of the more than $3 billion awarded to corporations and investors in disputes have come from challenges against natural resource, energy, and environmental policies.

Last week, on the floor I compared the Big Tobacco playbook—that is the one that was found by a Federal court to be a civil racketeering enterprise—to the fossil fuel industry's scheme to undermine climate action in the United States.

The comparisons are self-evident. Well, the tobacco industry is in on the trade challenge game as well, challenging countries' antismoking measures under the guise of protecting free trade.

If a country wants new health or environmental rules, big multinationals can use this ISDS process to thwart them. They don't necessarily even have to bring the challenge. Just threatening to seek extrajudicial judgments in the millions or even billions of dollars from panels stacked with corporate lawyers can be enough to make countries stop protecting the health of their citizens. We have seen the polluters use these tools already. This is not conjecture. It is what is happening.

Why open U.S. climate regulations to this risk? Why put our commitment to climate action at the mercy of these sketchy panels? What will keep the fossil fuel industry from threatening smaller countries in Paris to discourage them from climate accords? Where are the safeguards? Why should we accept trade deals that do not keep safe from that kind of threat a country's legitimate efforts to control carbon pollution? Why give the polluters this club?

It is not news to Congress that the fossil fuel industry does not play fair; it plays rough. We see that every day. The fossil fuel industry has used Citizens United to beat and cajole the Republican Party in Congress into becoming the political arm of the fossil fuel

industry. The party that brought us Theodore Roosevelt, the party that brought us the Environmental Protection Agency, the party of my predecessor, John Chafee, who is still revered across Rhode Island as an environmentalist, has now become the political arm of the fossil fuel industry. It is not its high point in history. It is a party that lines up behind climate denial.

If the fossil fuel industry is willing to impose its will that way on the Congress, why would we trust them with this ISDS mechanism to threaten and bully governments around the rest of the world?

A 21st-century trade deal ought to acknowledge the 21st-century reality of climate change. We have right now the technology and the ingenuity to address this problem and to boost our economy into the future. For the first time in years, we have international momentum to address this threat. But it does not make sense to act on climate change in Paris and undermine climate action in our trade deals. We need to wake up to that little problem, too.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. GARDNER). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

NOMINATION OF SALLY YATES

Mr. SESSIONS. Mr. President, I would like to share some thoughts on the nomination of Ms. Sally Yates to be Deputy Attorney General. That is the second in command at the U.S. Department of Justice. It is a very important position. She has had over the years a good background in general for us to consider that she would be able to handle that job in an effective way. She understands the system. She has been at the Department of Justice for a number of years. I have no concern with her personal integrity or work ethic or her desire to do well.

However, Congress and the executive branch are on a collision course here. A lot of our Members choose not to think sufficiently about it or consider the gravity of it, but I have to say that Congress needs to defend its institutional powers. We have certain powers we can use to defend constitutionally the responsibilities we have and to reject executive overreach—not many, but we have some real powers we can use.

Apparently, it is all right for the President to use all his powers and more. It is perfectly all right, I suggest, that we in the Senate use the powers we clearly and unequivocally and indisputably have.

I want to tell you how I see the situation with this nomination. I asked her directly at her confirmation hearing, as a member of the Judiciary committee, could she answer yes or no—did she think that the President's Executive amnesty is legal and constitutional. Basically, she said yes, she did. She answered that she has been ''serving as the Acting Deputy Attorney General of the Department of Justice. And the Department of Justice is currently litigating this matter.'' She further stated that ''the Department of Justice has filed pleadings with its position and I stand by those pleadings,'' which I suppose she should.

Two things about that. Historically, the Attorney General of the United States understands that their role is different from a lower official, but indeed they have to advise the President on matters of constitutional authority and tell the President no when a strong-willed President wants to do something that is not correct.

They are not a judicial officer; they are part of the executive branch. They should try to help the President achieve things the President wants to achieve as a matter of policy. I do not dispute that. But at some point, if the President is seeking to do clearly unconstitutional or illegal, they should tell the President so and not acquiesce, in my opinion. The honorable thing to do, as has been done in the past, is to resign. But if an Attorney General is firm and clear and stands in a firm position, then often the President will back down and avoid a constitutional crisis and keep our government going in the right way.

The Deputy Attorney General is the Department's second-ranking official and functions as its chief operating officer. The 25 components and 93 U.S. attorneys—I was a U.S. attorney for 12 years, 15 years at the Department of Justice; I am proud of that service and proud of the Department of Justice—they report directly to the Deputy, and 13 additional components report to the Deputy through the Associate Attorney General. So, on a daily basis, the Deputy Attorney General decides a broad range of legal, policy, and operational issues.

Ms. Yates, I suggest, is a high ranking official who holds a position—unlike a U.S. attorney or some section chief—who is involved in the policymaking of the Department of Justice. In addition to that, the litigation going on in Texas before Judge Andrew Hanen is under her direct supervision, and she is monitoring the lawyers who are advocating a position that is opposed by a majority of the State attorneys general of the United States. A majority of them have filed a lawsuit, and they contend that the President's Executive amnesty—an even more dramatic assertion of Executive power than his original amnesty in 2012—is contrary to the law and Constitution. She is direct supervisor over that litigation.

On April 7 of this year, Judge Andrew Hanen issued a blistering opinion in the litigation that is ongoing that the Justice Department attorneys had made ''multiple misrepresentations'' to the court ''both in writing and orally that no action would be taken pursuant to the 2014 DHS Directive until February 18, 2015.''

I would like to read some of the comments from the judge's opinion. Judges take this seriously; they are not just saying these things for fun.

Judge Hanen said this:

> Whether by ignorance, omission, purposeful misdirection, or because they were misled by their clients, the attorneys for the Government misrepresented the facts.

He didn't say that lightly. When U.S. attorneys and other Federal prosecutors appear in court, they have an absolute duty to tell the truth. It is a responsibility that every judge knows and every government attorney knows. When a government attorney goes into court and they are asked whether they are ready, they reply: The United States is ready, Your Honor. They have a duty to respond consistently with the integrity of the United States of America. We all know that.

In this case, the government lawyers asserted that:

> No applications for the revised DACA would be accepted until the 18th of February, and that no action would be taken on any of those applications until March the 4th.

Regarding this, Judge Hanen said:

> This representation was made even as the Government was in the process of granting over 100,000 three-year renewals under the revised DACA.

It goes on:

> In response to this representation, counsel for the States agreed to a schedule more favorable to the Government, and the Court granted the Government's request not only to file a sur-reply, but also to have additional time to do so. The States now argue that they would have sought a temporary restraining order, but for the Government's misrepresentations. A review of the Chronology of Events, attached as an appendix to this Order, certainly lends credence to the States' claims.

That is a pretty serious allegation. Not only did they misrepresent key facts, but they used that misrepresentation to achieve a favorable schedule, which often in litigation is important.

The judge goes on to say:

> The explanation by Defendants' counsel for their conduct after the fact is even more troublesome for the Court. Counsel told the Court during its latest hearing that she was unaware that these 2014 DACA amendments were at issue until she read the Court's February 16, 2015 Order of Temporary Injunction and Memorandum Opinion and Order. Counsel then claimed that the Government took ''prompt'' remedial action. This assertion is belied by the facts. Even if one were to assume that counsel was unaware that the 2014 DACA amendments in their entirety were at issue until reading this Court's February Opinion, the factual scenario still does not suggest candor on the part of the Government.

Government counsel have an absolute duty of candor to the court. That is a serious charge by the Federal judge.

It goes on:

The February Opinion was issued late in the evening on February 16, 2015 (based on the representation that ''nothing'' would happen on DAPA or revised DACA until at least February 18, 2015). As the February Opinion was finalized and filed at night, counsel could not have been expected to review it until the next day; yet, for the next two weeks, the Government did nothing to inform the Court of the 108,081 revised DACA approvals. Instead, less than a week later, on February 23, 2015, the Government filed a Motion to Stay and a Notice of Appeal. Despite having had almost a week to disclose the truth—or correct any omission, misunderstanding, confusion, or misrepresentation—the Government did not act promptly; instead it again did nothing. Surely, an advisory to this Court (or even to the Court of Appeals) could have been included in either document filed during this time period. Yet, counsel for the Government said nothing.

So the court goes on:

Mysteriously, what was included in the Government's February 23, 2015 Motion to Stay was a request that this Court rule on the Motion ''by the close of business on Wednesday, February 25. . . . ''—in other words, within two days. Had the Court complied with this request, it would have cut off the States' right to file any kind of reply. If this Court had ruled according to the Government's requested schedule, it would have ruled without the Court or the States knowing that the Government had granted 108,081 applications pursuant to the revised DACA despite its multiple representations to the contrary.

The attorneys were telling the Court they had not granted any of these applications and had stopped it while, in fact, over 108,000 applications had been issued.

The court goes on to say:

While this Court is skeptical that the Government's attorneys could have reasonably believed that the DACA amendments contained in the 2014 DHS Directive were not at issue prior to the injunction hearing on January 15, 2015, this Court finds it even less conceivable that the Government could have thought so after the January 15, 2015 hearing, given the interplay between the Court and counsel at that hearing. Regardless, by their own admission, the Government's lawyers knew about it at least as of February 17, 2015. Yet, they stood silent. Even worse, they urged this Court to rule before disclosing that the Government had already issued 108,081 three-year renewals under the 2014 DACA amendments despite their statements to the contrary.

The judge goes on to say:

Another week passed after the Motion to Stay was filed and still the Government stood mute . . . Still, the Government's lawyers were silent . . . Finally, after waiting two weeks, and after the States had filed their reply, the Government lawyers filed their Advisory that same night at 6:57 p.m. CST. Thus, even under the most charitable interpretation of these circumstances, and based solely upon what counsel for the Government told the Court, the Government knew its representations had created ''confusion,'' but kept quiet about it for two weeks while simultaneously pressing this Court to rule on the merits of its motion. At the March 19, 2015 hearing, counsel for the Government repeatedly stated to the Court that they had acted ''promptly'' to clarify any ''confusion'' they may have caused. But the facts clearly show these statements to be disingenuous. The Government did anything but act ''promptly'' to clarify the Government-created ''confusion.''

The judge goes on to quote the rules of professional conduct:

The ABA Model Rules of Professional Conduct . . . require a lawyer to act with complete candor in his or her dealings with the Court. Under these rules of conduct, a lawyer must be completely truthful and forthright in making representations to the Court. Fabrications, misstatements, half-truths, artful omissions, and the failure to correct misstatements may be acceptable, albeit lamentable, in other aspects of life; but in the courtroom, when an attorney knows that both the Court and the other side are relying on complete frankness, such conduct is unacceptable.

I don't think that is a little matter. I am just saying this nominee had those lawyers under her supervision at the time this occurred. We have had a lot of talk over the years from Democrats and Republicans about demanding higher standards of professionalism among government prosecutors and lawyers. I think that is a legitimate demand. We have had too many examples of failures.

Sometimes lawyers—I have seen it—for the government have been unfairly criticized. I don't think there is any dispute that the judge's findings in this case represent an accurate statement of the misrepresentations and disingenuousness of these attorneys.

Has any discipline been undertaken against them? I am not saying Ms. Yates knew this. I am just saying that if you are the responsible supervisor, shouldn't you take some action to deal with it, and to my knowledge, none has been taken, even at some point the Department of Justice suggested they did nothing wrong.

Basically, the Department of Justice has said the court is incorrect in its finding, which I don't think can be justified.

On May 7, 2015, the Department of Justice notified the court of an additional misrepresentation regarding approximately 2,000 individuals being granted three-year work authorizations subsequent to this opinion and in violation of the original court order.

OK. So you say, well, maybe she is not responsible for that, but I do believe the Deputy Attorney General—acting now—is responsible for taking action against attorneys who breached the proper standards of ethical conduct. But we are drifting too far, in my opinion, into a postmodern world, where rules don't seem to make much difference. You can just redefine the meaning of words and you can just say—once caught in some wrongdoing—well, we didn't mean it or that is not correct or the facts are different, when the facts show what the facts show. It is an unhealthy trend in this country, I think. It is particularly unacceptable in the Department of Justice. That was a great department. It has high standards. It is filled with many of the best lawyers of the highest integrity anywhere in the world, but sloppy work and disingenuousness cannot be acceptable. I believe the Department of Justice needs to do more, and the primary responsibility, it seems to me, is with the Deputy Attorney General.

Well, what about the fundamental problem of Congress's power to deal with a President who overreaches, a President who makes law rather than enforces law? We learned in elementary school that Congress makes law and the President enforces law. The Chief Executive cannot make up law. He cannot issue decrees and then declare they are the law of the land. How fundamental is that?

Professor Jonathan Turley at George Washington University Law School is a constitutional expert and a supporter of President Obama. He testified before our Judiciary Committee, and other committees, a number of times over the years, mostly for the Democrats, I think—at least from the times I remember. This is what Professor Turley has warned Congress about.

I urge colleagues to understand what we are considering here. He said:

I believe the President has exceeded his brief. The president is required to faithfully execute the laws. He's not required to enforce all laws equally or commit the same resources through them. But I believe the President has crossed the constitutional line in some of these areas.

Here he is referring to the original DACA. He said:

This goes to the very heart of what is the Madisonian system. If a president can unilaterally change the meaning of laws in substantial ways or refuse to enforce them, it takes offline that very thing that stabilizes our system. I believe the members will loathe the day that they allow this to happen.

He is testifying before the House of Representatives and talking directly to Members of Congress. He said that you will loathe the day that you allowed this to happen.

He also said:

This will not be our last president. There will be more presidents who will claim the same authority.

He further said:

The problem of what the President is doing is that he is not simply posing a danger to the constitutional system; he is becoming the very danger the Constitution was designed to avoid: that is, the concentration of power in a single branch. This Newtonian orbit that the three branches exist in is a delicate one, but it is designed to prevent this type of concentration.

That is what Professor Turley said to the Members of the House of Representatives. He goes on to say:

We are creating a new system here, something that is not what was designed. We have this rising fourth branch in a system that is tripartite. The center of gravity is shifting, and that makes it unstable. And within that system, you have the rise of an uber presidency. There could be no greater danger for individual liberty, and I really think that the framers would be horrified by that shift because everything they've dedicated themselves to was creating this orbital balance, and we've lost it.

We need to listen to this. The President is issuing orders that nullify law,

actually creating an entirely new system of immigration that Congress rejected. He proposed all of this, and Congress flatly refused to pass it. He then declares he has the power to do this system anyway, and he is doing it. This judge has finally stopped part of it for the moment.

Professor Turley is talking about deep constitutional questions and what our duty is here. It is not a question of what you believe about immigration or how you should believe the laws are to be written or enforced. We can debate that. But there should be unanimous agreement on both sides of the aisle that the President enforce the laws we have—the laws duly passed by Congress—and not create some new law and enforce them.

Mr. Turley goes on to say:

I believe that [Congress] is facing a critical crossroads in terms of its continued relevance in this process. What this body cannot become is a debating society where it can issue rules and laws that are either complied with or not complied with by the president. . . . [A] president cannot ignore an express statement on policy grounds. . . . Is this [Congress] truly the body that existed when it was formed? Does it have the same gravitational pull and authority that was given to it by the framers?

That is what Mr. Turley says. Then he looks directly at the Members of Congress and says:

You're the keepers of this authority. You took an oath to uphold it. And the framers assumed that you would have the institutional wherewithal, and, frankly, ambition to defend the turf that is the legislative branch.

I think that is a legitimate charge to the Members of Congress—House and Senate.

Professor Turley goes on to say:

The current passivity of Congress represents a crisis for members, crisis of faith for members willing to see a president assume legislative powers in exchange for insular policy gains. The short term insular victories achieved by this president will come at a prohibitive cost if the balance is not corrected. Constitutional authority is easy to lose in the transient shift to politics. It's far more difficult to regain. If a passion for the Constitution does not motivate members of Congress, perhaps a sense of self-preservation will be enough to unify members. President Obama will not be our last president. However, these acquired powers will be passed on to his successors. When that occurs, members may loathe the day that they remain silent as the power of government shifted so radically to the chief executive. The powerful personality that engendered this loyalty will be gone, but the powers will remain. We are now at the Constitutional tipping point of our system. If balance is to be reestablished, it must begin before this president leaves office, and that will likely require every possible means to reassert legislative authority.

What is our authority? How do we reassert power? I believe it is perfectly constitutionally appropriate for us to tell the President of the United States: We are not going to confirm your nominee for Deputy Attorney General of the United States, who is directly supervising the lawsuits, the litigation that is going on that undermines our power and undermines the constitutional authority of the people's branch.

We are not going to confirm them and allow them to continue to go to court every day and take a position directly contrary to the authority that has been given by the Constitution to the Congress. That is pretty simple. So we have that power. We can confirm or not confirm any nominee to any position. We absolutely should not abuse that power. We shouldn't attack people personally and attack their ethics just because we disagree with their policies.

I think Ms. Yates, as I said, is a responsible person, but she is the point person, the supervisor of a litigation that has gone awry in a number of ways in Texas and fundamentally is seeking to advance an unconstitutional power by the Chief Executive. I don't believe it is a little matter. I think it is a big matter. Therefore, I will not vote for her confirmation on that basis.

Some of our Members haven't thought this through yet, but sooner or later we are going to have to confront the stark question of how long can we remain effectively silent in the face of Presidential overreach.

Professor Turley, in January of this year testified before the Senate Judiciary Committee during the confirmation hearing for the Attorney General nominee, and added these words: ''If there is an alternative in unilateral executive action, the legislative process becomes purely optional and discretionary.''

In other words, if the Chief Executive can execute an alternative power to pass laws and execute policies he wants if they are contrary to Congress's will, then the legislative process becomes purely optional and discretionary. It has to be mandatory. It can't be that our power is optional.

He goes on to say:

The real meaning of a president claiming discretion to negate or change Federal law is the discretion to use or ignore the legislative process. No actor in a Madisonian system is given such discretion. All three branches are meant to be locked in a type of constitutional synchronous orbit—held stable by their countervailing gravitational pull. If one of those bodies shifts, the stability of the system is lost.

So the President does not have the power to ignore the legislative process, and we are going to regret this day if we remain silent on this issue.

I appreciate the opportunity to share this with my colleagues. I don't know if anybody is listening at this point. Certainly the American people were horrified by the Executive amnesty carried out by the President last year. He announced it before the election but held off until afterward. Still, there is no doubt in my mind that many of the people who went to the polls in November were voting for a rejection of this kind of Executive overreach. It was a message of this past election.

We took our seats in January, a new Congress is here, and Professor Turley has said we need to act and we are not acting. Professor Turley has said we need to stand up to the Chief Executive, this Chief Executive while he is in office now, and if we don't, when we go to another election cycle, the powers he has aggrandized to himself will be claimed by the next President.

Truly so. That is a grim warning he has given us. I am ready and I think it is time for us to stand up and be clear about this.

So, regretfully, I feel compelled to carry out one of the powers Congress has clearly been given—the power to confirm or reject nominations for higher office. I believe we should reject the nomination for the Department of Justice Deputy Attorney General who is advocating and pursuing a lawsuit that goes against the constitutional powers of the Congress, and therefore I will be voting no on the nomination.

I thank the Chair, and I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. SASSE). The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

Mr. MENENDEZ. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMTRAK TRAIN DERAILMENT

Mr. MENENDEZ. Mr. President, I rise to bring attention to the tragic Amtrak derailment that took at least 7 lives and caused over 140 injuries, including an Associated Press member from New Jersey, Jim Gaines of Plainsboro, NJ. Our thoughts and prayers are with the families of those who lost their lives. To those of us from New Jersey and those who live along the Northeast corridor, they are our neighbors, our friends, our relatives. They could be us. It hits especially close to home. I know, because I take Amtrak virtually every week back to New Jersey.

There was a period of time last night when I did not know the whereabouts of my son Rob, who was scheduled to be on Amtrak back to New York. But I later found out that he was on the next train immediately behind the one that derailed, and thankfully, he was safe. I am grateful for that. But others were not so lucky.

But luck should not be America's transportation policy. It is imperative that the cause of the derailment be fully investigated so that we can prevent tragedies such as these in the future. I have already been on the phone with Secretary of Transportation Anthony Fox and continue to monitor closely the situation.

I want to recognize the extraordinary work of our first responders. Once again, firefighters, police officers, and emergency responders showed us what bravery is all about. They ran to the crash site to save lives while others were running away. For that, we should all be grateful.

Now, we do not know what caused this accident. But we do know that we

need to invest in 21st-century systems and equipment and stop relying on patchwork upgrades to old, rusted 19th century rail lines.

I travel Amtrak, as I said, virtually every week. I travel the Acela, which is supposed to be our high-speed rail. It is like shake, rattle, and roll. As a member of the Senate Foreign Relations Committee, I have traveled in other countries in the world, such as Japan. They have a bullet train in which you virtually cannot feel anything while you are on the train, going at speeds far in excess of what we call high-speed rail.

Now, there are still many questions to which we do not know the answers. Was there human failure? Was there a mechanical failure or were there infrastructure issues or was it a combination of issues? What we do know is that our rail passengers deserve safe and modern infrastructure. New Jersey, for example, is at the heart of the Northeast corridor. It has long held a competitive advantage with some of the Nation's most modern highways, an extensive transit network, and some of the most significant freight corridors in the world at the confluence of some of the largest and busiest rail lines, interstates, and ports.

In a densely populated State such as New Jersey, the ability to move people and goods safely and efficiently is critical to our economy and critical to our quality of life. But, unfortunately, in recent years, New Jersey and the Nation as a whole have fallen behind. We have 20 years maximum—maximum—before the Hudson River tunnels are taken out of service. Twenty years may sound maybe to some of our young pages like a long time, but it is a flash of the eye. Think about what happens if we take either or both of those tunnels out of service without an alternative, tunnels that are absolutely essential to moving people and goods in the region that contributes $3.5 trillion to our Nation's economy—20 percent of the entire Nation's gross domestic product.

Nationwide, 65 percent of major roads in America are in poor condition. One in four bridges in our Nation needs significant repair. There is an $808 billion backlog in highway and bridge investment needs. On the transit side, there is an $86 billion backlog of transit maintenance needs—maintenance needs, not expanding, just maintaining that which we have.

It will take almost $19 billion a year through the year 2030 to bring our transit assets into good repair. These are just a handful of the statistics underscoring our Nation's failure to invest in our transportation network. But we have to get beyond looking at the numbers on a page. We have to talk about what Congress's failure to act means to the people we represent, to every community—every community, every commuter, every family, everyone who travels every day, and every construction worker looking for a job.

Failure to act means construction workers now face a 10-percent unemployment rate, and at a time when our infrastructure is crumbling around us, they will not get the work they need. It means a business cannot compete in a globalized economy because their goods cannot get to market in time. It means a working mother is stuck in traffic and cannot get home in time for dinner with her kids. In the very worst cases—cases such as the one we saw yesterday on Amtrak—it very well means that a loved one is lost in a senseless tragedy.

In Congress, we too often treat our infrastructure as if it is an academic exercise, as if it is numbers on a page that we adjust to score political points or balance a budget or make an argument about what types of transportation are worthy of our support. But that is not the real world. In the real world, the choices we make have an impact on people's lives, on their jobs, on their income. They have an impact on our Nation's ability to compete. They have an impact on the safety of Americans and America's ability to lead globally the economy in the world.

We in Congress are failing to recognize the real-world impacts of the choices we make about our transportation infrastructure. We have a passenger rail bill that expired in 2013. We have a highway trust fund on the brink of insolvency, with no plans—no plans—to fix it sustainably. We have a crowded and outdated aviation system that we refuse to adequately fund. We have failed to upgrade with presently available technologies that can reduce the number of failures. We have appropriations bills aiming to cut already-low funding levels of Amtrak, in particular, to meet an arbitrary budget cap for the sake of political points.

I cannot understand that. I cannot understand that. We are living off the greatest generation's investment in infrastructure in this country. We have done nothing to honor that investment, to sustain it or to build upon it. Yet nothing we are doing is aimed at fixing the problem. Our inaction comes with an extraordinarily high cost. So I can tell you, as the senior Democrat on the subcommittee on mass transit, I categorically reject the idea that we cannot afford to fix our transportation system.

The truth is, we cannot afford not to fix it. The Amtrak disaster last night is a tragic reminder that we have to act. We are reminded of the tragic consequences of inaction and the impact of inaction on the lives of workers and families, on their lives and their ability to get to work and do their jobs with confidence that they will be safe.

So, as a member of the Finance Committee, and the ranking member of the transit subcommittee, I have been advocating that we act as soon as possible. We cannot keep pretending the problem is going to resolve itself if we just wait long enough. We simply cannot afford to wait. I hope that everyone in this Chamber—Democrats, Republicans, and Independents alike—will come together, will work together, and make real progress in building the future that we can be proud of.

We can start by putting politics aside to think about the safety of the American people, to think about the future, to think about America's competitiveness, and to find common ground to do whatever it takes to invest in America's railroads, ports, highways, and bridges, and to invest in our future.

So let's not wait until there is another tragic headline or to see the consequences of what flows, as people along the entire Northeast corridor are trying to figure out alternatives in the midst of a system that is now shut down for intercity travel—all the transit lines of States and regions within the Northeast corridor that depend upon using Amtrak lines to get to different destinations for their residents, to get people to one of the great hospitals along the Northeast corridor, to get people to their Nation's Capital to advocate with their government, to get people and the sales forces of companies to work, to get home.

Let's not wait until we have another tragedy to think about the consequences of our transportation system, what it means to the Nation, or until the next time when lives are lost. I think we can do much better. I have faith that hopefully this will be a crystalizing moment for us on this critical issue.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. PERDUE). The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

Mr. LEAHY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE SESSION

NOMINATION OF SALLY QUILLIAN YATES TO BE DEPUTY ATTORNEY GENERAL

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider the following nomination, which the clerk will report.

The legislative clerk read the nomination of Sally Quillian Yates, of Georgia, to be Deputy Attorney General.

The PRESIDING OFFICER. There will now be up to 1 hour of debate, equally divided in the usual form.

The Senator from Vermont.

Mr. LEAHY. Mr. President, I am delighted we have the confirmation of Sally Yates before the body. I have pushed for a vote for several weeks, and now I know we are finally going to confirm Sally Yates to be our next Deputy Attorney General of the United States. I think she will be easily confirmed. I know there has been a delay